



महाराष्ट्र शासन राजपत्र

भाग सहा

वर्ष २, अंक ७]

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प्राधिकृत प्रकाशन

संसदेचे अधिनियम व राष्ट्रपतींनी प्रख्यापित केलेले अध्यादेश

अनुक्रमणिका

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LAW AND JUDICIARY DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya
Mumbai 400 032, dated the 20th October 2016

No. 1654/B.—The following Acts of Parliament are hereby republished for general information :—

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 1st January 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December 2015 and is hereby published for general information :—

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2015

(No. 1 of 2016)

[31st December, 2015]

An Act further to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows :—

1. Short title and commencement.—(1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

(2) It shall come into force on such date as the Central Government may, by notification in the *Official Gazette*, appoint.

2. Amendment of long title.—In the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) (hereinafter referred to as the principal Act), in the long title, for the words “Special Courts”, the words “Special Courts and the Exclusive Special Courts” shall be substituted.

3. Amendment of section 2.—In section 2 of the principal Act, in sub-section (1),—

(i) after clause (b), the following clauses shall be inserted, namely:—

“(bb) “dependent” means the spouse, children, parents brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance ;

(bc) “economic boycott” means—

(i) a refusal to deal with, work for hire or do business with other person ; or

(ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration ; or

(iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business ; or

(iv) to abstain from the professional or business relations that one would maintain with other person ;

(bd) “Exclusive Special Court” means the Exclusive Special Court established under sub-section (1) of section 14 exclusively to try the offences under this Act ;

(be) “forest rights” shall have the meaning assigned to it in sub-section (1) of section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) ;

(bf) “manual scavenger” shall have the meaning assigned to it in clause (g) of sub-section (1) of section 2 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (25 of 2013) ;

(bg) “public servant” means a public servant as defined under section 21 of the Indian Penal Code (45 of 1860), as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be ;’ ;

(ii) after clause (e), the following clauses shall be inserted, namely :—

“(ea) “Schedule” means the Schedule appended to this Act ;

(eb) “social boycott” means a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with other person or to isolate him from others ;

(ec) “victim” means any individual who falls within the definition of the “Scheduled Castes and Scheduled Tribes” under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs ;

(ed) “witness” means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence ;’ ;

(iii) for clause (f), the following clause shall be substituted, namely :—

“(f) the words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be, shall be deemed to have the meanings respectively assigned to them in those enactments.”.

4. *Amendment of section 3.*—In section 3 of the principal Act,—

(i) ‘for sub-section (1), the following sub-section shall be substituted, namely :—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance ;

(b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe ;

(c) with intent to cause injury, insult or annoyance to any member of Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood ;

(d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe ;

(e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act which is derogatory to human dignity ;

(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred ;

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.—For the purposes of clause (f) and this clause, the expression “wrongfully” includes—

(A) against the person’s will ;

(B) without the person’s consent ;

(C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt ; or

(D) fabricating records of such land ;

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do “begar” or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government ;

(i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves ;

(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose ;

(k) performs, or promotes dedicating a Schedule Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a *devadasi* or any other similar practice or permits aforementioned acts ;

(l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe—

(A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law ;

(B) not to file a nomination as a candidate or to withdraw such nomination ; or

(C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election ;

(m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Pari IX of the Constitution or a Municipality under Part IXA of the Constitution, from performing their normal duties and functions ;

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Schedule Castes or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him ;

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law ;

(p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Schedule Tribe ;

(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Schedule Tribe ;

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view ;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view ;

(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.

Explanation.—For the purposes of this clause, the expression “object” means and includes statue, photograph and portrait ;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes ;

(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes ;

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent ;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.—For the purposes of sub-clause (i), the expression “content” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act :

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence ;

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used ;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to ;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence :

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty ;

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing *ghat*, any public conveyance, any road, or passage ;

(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions ;

(C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including *jatras* ;

(D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place ; or using any utensils or articles meant for public-use in any place open to the public: or

(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to ;

(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch ; or

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.'

(ii) in sub-section (2),—

(a) in clause (v), for the words “on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member”, the words “knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member” shall be substituted ;

(b) after clause (v). the following clause shall be inserted, namely :—

"(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to find."

5. Substitution of new section for section 4.—For section 4 of the principal Act, the following section shall be substituted, namely :—

“4. Punishment for neglect of duties.—(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section (1) shall include—

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant ;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act ;

(c) to furnish a copy of the information so recorded forthwith to the informant ;

(d) to record the statement of the victims or witnesses ;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing ;

(f) to correctly prepare, frame and translate any document or electronic record ;

(g) to perform any other duty specified in this Act or the rules made thereunder :

Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.

(3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.”.

and

6. Amendment of section 8.—In section 8 of the principal Act,—

(i) in clause (a), for the words “any financial assistance to a person accused of”, the words “any financial assistance in relation to the offences committed by a person accused of” shall be substituted ;

(ii) after clause (b), the following clause shall be inserted, namely :—

“(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.”.

7. *Amendment of section 10.*—In section 10 of the principal Act, in sub-section (1),—

(a) after the words and figures “article 244 of the Constitution”, the words, brackets and figures “or any area identified under the provisions of clause (vii) of sub-section (2) section 21” shall be inserted ;

(b) for the words “two years”, the words “three years” shall be substituted.

8. *Substitution of new section for section 14.*—for section 14 of the principal Act, the following section shall be substituted, namely :—

“14. *Special Court and Exclusive Special Court.*—(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the *Official Gazette*, establish an Exclusive Special Court for one or more Districts :

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by the notification in the *Official Gazette*, specify for such Districts, the Court of Session to be a Social Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing :

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.”.

9. *Insertion of new section 14A.*—After section 14 of the principal Act, the following section shall be inserted, namely :—

“14A. *Appeals.*—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from :

Provided that the High Court may entertain an appeal after period the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days :

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.”.

10. Substitution of new section for section 15.—For section 15 of the principal Act, the following section shall be substituted, namely :—

“15. *Special Public Prosecutor and Exclusive Public Prosecutor.*—(1) For every Special Court, the State Government shall, by the notification in the *Official Gazette*, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(2) For every Exclusive Special Court, the State Government shall, by notification in the *Official Gazette*, specify an Exclusive Special Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as an Exclusive Special Public Prosecutor for the purpose of conducting cases in that Court.”.

11. Insertion of new Chapter IVA.—After Chapter IV of the principal Act, the following Chapter shall be inserted, namely :—

“CHAPTER IVA

RIGHTS OF VICTIMS AND WITNESSES

15A. *Rights of victims and witnesses.*—(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses—

- (a) the complete protection to secure the ends of justice ;
- (b) the travelling and maintenance expenses during investigation, inquiry and trial ;
- (c) the social-economic rehabilitation during investigation, inquiry and trial ; and
- (d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including—

- (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public ;

(b) issuing directions for non-disclosure of the identity and addresses of the witnesses ;

(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection :

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as—

(a) to provide a copy of the recorded First Information Report at free of cost ;

(b) to provide immediate relief in cash or in kind to atrocity victims or their dependents ;

(c) to provide necessary protection to the atrocity victims or their dependents, and witnesses ;

(d) to provide relief in respect of death or injury or damage to property ;

(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims ;

(f) to provide the maintenance expenses to the atrocity victims and their dependents ;

(g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report ;

(h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment ;

(i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and chargesheet and to provide copy of the chargesheet at free of cost ;

(j) to take necessary precautions at the time of medical examination ;

(k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount ;

(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial ;

(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose ;

(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates.”.

12. *Insertion of new Schedule.*—After section 23 of the principal Act, the following Schedule shall be inserted namely :—

“THE SCHEDULE

[See section 3(2) (va)]

Section under the Indian Penal Code	Name of offence and punishment
120A	Definition of criminal conspiracy.
120B	Punishment of criminal conspiracy
141	Unlawful assembly
142	Being member of unlawful assembly.
143	Punishment for unlawful assembly.
144	Joining unlawful assembly armed with deadly weapon.
145	Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.
146	Rioting.
147	Punishment for rioting.
148	Rioting, armed with deadly weapon.
217	Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.
319	Hurt.
320	Grievous hurt.
323	Punishment for voluntarily causing hurt.
324	Voluntarily causing hurt by dangerous weapons or means.
325	Punishment for voluntarily causing grievous hurt.
326B	Voluntarily throwing or attempting to throw acid.
332	Voluntarily causing hurt to deter public servant from his duty.
341	Punishment for wrongful restraint.
354	Assault or criminal force to woman with intent to outrage her modesty.
354A	Sexual harassment and punishment for sexual harassment.
354B	Assault or use of criminal force to woman with intent to disrobe.
354C	Voyeurism.
354D	Stalking.
359	Kidnapping.
363	Punishment for kidnapping.
365	Kidnapping or abducting with intent secretly and wrongfully to confine person.
376B	Sexual intercourse by husband upon his wife during separation.
376C	Sexual intercourse by a person in authority.
447	Punishment for criminal trespass.
506	Punishment for criminal intimidation.
509	Word, gesture or act intended to insult the modesty of a woman.”.

13. *Repeal and saving.*—(1) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 (Ord. 1 of 2014) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 1st January 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December 2015, and is hereby published for general information :—

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

(No. 2 of 2016)

[31st December 2015]

An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected ;

AND WHEREAS, the Government of India has acceded on the 11th December 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child ;

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993), and other related international instruments.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. *Short title, extent, commencement and application.*—(1) This Act may be called the Juvenile Justice (Care and Protection of Children) Act, 2015.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the *Official Gazette*, appoint.

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including—

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law ;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) “abandoned child” means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry ;

(2) “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child ;

(3) “adoption regulations” means the regulations framed by the Authority and notified by the Central Government in respect of adoption ;

(4) “administrator” means any district official not below the rank of Deputy Secretary to the State, on whom magisterial powers have been conferred ;

(5) “aftercare” means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society ;

(6) “authorised foreign adoption agency” means a foreign social or child welfare agency that is authorised by the Central Adoption Resource Authority on the recommendation of their Central Authority or Government department of that country for sponsoring the application of non-resident Indian or overseas citizen of India or persons of Indian origin or foreign prospective adoptive parents for adoption of a child from India ;

(7) “Authority” means the Central Adoption Resource Authority constituted under section 68 ;

(8) “begging” means—

(i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, under any pretence ;

(ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal ;

(9) “best interest of child” means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development ;

(10) “Board” means a Juvenile Justice Board constituted under section 4 ;

(11) “Central Authority” means the Government department recognised as such under the Hague Convention on Protection of Children and Co-operation in Inter-country Adoption (1993) ;

(12) “child” means a person who has not completed eighteen years of age ;

(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence ;

(14) “child in need of care and protection” means a child—

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence ; or

(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street ; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child ; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out ; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person ; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee ; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child ; or

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him ; or

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed ; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts ; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking ; or

(x) who is being or is likely to be abused for unconscionable gains ; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity ; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage ;

(15) “child friendly” means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child ;

(16) “child legally free for adoption” means a child declared as such by the Committee after making due inquiry under section 38 ;

(17) “Child Welfare Officer” means an officer attached to a Children’s Home, for carrying out the directions given by the Committee or, as the case may be, the Board with such responsibility as may be prescribed ;

(18) “Child Welfare Police Officer” means an officer designated as such under sub-section (1) of section 107 ;

(19) “Children’s Home” means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50 ;

(20) “Children’s Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act ;

(21) “child care institution” means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services ;

(22) “Committee” means Child Welfare Committee constituted under section 27 ;

(23) “court” means a civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts ;

(24) “corporal punishment” means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child ;

(25) “childline services” means a twenty-four hours emergency outreach service for children in crisis which links them to emergency or long-term care and rehabilitation service ;

(26) "District Child Protection Unit" means a Child Protection Unit for a District, established by the State Government under section 106, which is the focal point to ensure the implementation of this Act and other child protection measures in the district ;

(27) "fit facility" means a facility being run by a governmental organisation or a registered voluntary or non-governmental organisation, prepared to temporarily own the responsibility of a particular child for a specific purpose, and such facility is recognised as fit for the said purpose, by the Committee, as the case may be, or the Board, under sub-section (1) of section 51 ;

(28) "fit person" means any person, prepared to own the responsibility of a child, for a specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose, by the Committee or, as the case may be, the Board, to receive and take care of the child ;

(29) "foster care" means placement of a child, by the Committee for the purpose of alternate care in the domestic environment of a family, other than the child's biological family, that has been selected, qualified, approved and supervised for providing such care ;

(30) "foster family" means a family found suitable by the District Child Protection Unit to keep children in foster care under section 44 ;

(31) "guardian" in relation to a child, means his natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings ;

(32) "group foster care" means a family like care facility for children in need of care and protection who are without parental care, aiming on providing personalised care and fostering a sense of belonging and identity, through family like and community based solutions ;

(33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more ;

(34) "inter-country adoption" means adoption of a child from India by non-resident Indian or by a person of Indian origin or by a foreigner ;

(35) "juvenile" means a child below the age of eighteen years ;

(36) "narcotic drug" and "psychotropic substance" shall have the meanings, respectively, assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) ;

(37) "no objection certificate" for inter-country adoption means a certificate issued by the Central Adoption Resource Authority for the said purpose ;

(38) "non-resident Indian" means a person who holds an Indian passport and is presently residing abroad for more than one year ;

(39) "notification" means the notification published in the *Official Gazette* of India, or as the case may be, in the Gazette of a State, and the expression "notify" shall be construed accordingly ;

(40) "observation home" means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such, for the purposes specified in sub-section (1) of section 47 ;

(41) "open shelter" means a facility for children, established and maintained by the State Government, either by itself, or through a voluntary or non-governmental organisation under sub-section (1) of section 43, and registered as such, for the purposes specified in that section ;

(42) "orphan" means a child—

(i) who is without biological or adoptive parents or legal guardian ; or

(ii) whose legal guardian is not willing to take, or capable of taking care of the child ;

- (43) "overseas citizen of India" means a person registered as such under the Citizenship Act, 1955 (57 of 1955) ;
- (44) "person of Indian origin" means a person, any of whose lineal ancestors is or was an Indian national, and who is presently holding a Person of Indian Origin Card issued by the Central Government ;
- (45) "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years ;
- (46) "place of safety" means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order ;
- (47) "prescribed" means prescribed by rules made under this Act ;
- (48) "probation officer" means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958) or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit ;
- (49) "prospective adoptive parents" means a person or persons eligible to adopt a child as per the provisions of section 57 ;
- (50) "public place" shall have the same meaning assigned to it in the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) ;
- (51) "registered", with reference to child care institutions or agencies or facilities managed by the State Government, or a voluntary or non-governmental organisation, means observation homes, special homes, place of safety, children's homes, open shelters or Specialised Adoption Agency or fit facility or any other institution that may come up in response to a particular need or agencies or facilities authorised and registered under section 41, for providing residential care to children, on a short-term or long-term basis ;
- (52) "relative", in relation to a child for the purpose of adoption under this Act, means a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent ;
- (53) "State Agency" means the State Adoption Resource Agency set up by the State Government for dealing with adoption and related matters under section 67 ;
- (54) "serious offences" includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years ;
- (55) "special juvenile police unit" means a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 107 ;
- (56) "special home" means an institution established by a State Government or by a voluntary or non-governmental organisation, registered under section 48, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board ;
- (57) "Specialised Adoption Agency" means an institution established by the State Government or by a voluntary or non-governmental organisation and recognised under section 65, for housing orphans, abandoned and surrendered children, placed there by order of the Committee, for the purpose of adoption ;
- (58) "sponsorship" means provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child ;

(59) "State Government", in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution ;

(60) "surrendered child" means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee ;

(61) all words and expressions used but not defined in this Act and defined in other Acts shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

GENERAL PRINCIPLES OF CARE AND PROTECTION OF CHILDREN

3. General principles to be followed in administration of Act.—The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely :—

(i) *Principle of presumption of innocence.*—Any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of eighteen years.

(ii) *Principle of dignity and worth.*—All human beings shall be treated with equal dignity and rights.

(iii) *Principle of participation.*—Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) *Principle of best interest.*—All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) *Principle of family responsibility.*—The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) *Principle of safety.*—All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) *Positive measures.*—All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) *Principle of non-stigmatising semantics.*—Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) *Principle of non-waiver of rights.*—No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) *Principle of equality and non-discrimination.*—There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) *Principle of right to privacy and confidentiality.*—Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) *Principle of institutionalisation as a measure of last resort.*—A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) *Principle of repatriation and restoration.*—Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) *Principle of fresh start.*—All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) *Principle of diversion.*—Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) *Principles of natural justice.*—Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

CHAPTER III

JUVENILE JUSTICE BOARD

4. *Juvenile Justice Board.*—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(3) No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

(4) No person shall be eligible for selection as a member of the Board, if he —

(i) has any past record of violation of human rights or child rights ;

(ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence ;

(iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government ;

(iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

(5) The State Government shall ensure that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

(6) The term of office of the members of the Board and the manner in which such member may resign shall be such, as may be prescribed.

(7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he —

(i) has been found guilty of misuse of power vested under this Act ; or

(ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason ; or

(iii) fails to attend less than three-fourths of the sittings in a year ; or

(iv) becomes ineligible under sub-section (4) during his term as a member.

5. Placement of person, who cease to be a child during process of inquiry.—Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.

6. Placement of persons, who committed an offence, when person was below the age of eighteen years.—(1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.

(2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.

(3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act.

7. Procedure in relation to Board.—(1) The Board shall meet at such times and shall observe such rules in regard to the transaction of business at its meetings, as may be prescribed and shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular courts.

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings :

Provided that there shall be atleast two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under sub-section (3) of section 18.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

8. Powers, functions and responsibilities of the Board.—(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include'—

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process ;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation ;

(c) ensuring availability of legal aid for the child through the legal services institutions ;

(d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings ;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed ;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14 ;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved ;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required ;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law ;

(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government ;

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard ;

(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard ;

(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home ; and

(n) any other function as may be prescribed.

9. Procedure to be followed by a Magistrate who has not been empowered under this Act.—(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately alongwith the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

CHAPTER IV

PROCEDURE IN RELATION TO CHILDREN IN CONFLICT WITH LAW

10. Apprehension of child alleged to be in conflict with law.—(1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall

produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended :

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government shall make rules consistent with this Act,—

(i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board ;

(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

11. Role of person in whose charge child in conflict with law is placed.—Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance:

Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

12. Bail to a person who is apparently a child alleged to be in conflict with law.—(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

13. Information to parents, guardian or probation officer.—(1) Where a child alleged to be in conflict with law is apprehended, the officer designated as Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform—

(i) the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced ; and

(ii) the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry.

(2) Where a child is released on bail, the probation officer or the Child Welfare Officer shall be informed by the Board.

14. Inquiry by Board regarding child in conflict with law.—(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely :—

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment ;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings ;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry ;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974) ;

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974) ;

(f) inquiry of heinous offences,—

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e) ;

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

15. Preliminary assessment into heinous offences by Board.—(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18 :

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974) :

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

16. Review of pendency of inquiry.—(1) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards.

(2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or non-governmental organisation to be nominated by the Chairperson.

(3) The information of such pendency shall also be furnished by the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government.

17. Orders regarding a child not found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect.

(2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

18. Orders regarding child found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian ;

(b) direct the child to participate in group counselling and similar activities ;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board ;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated ;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years ;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years ;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill

development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home :

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

- (i) attend school ; or
- (ii) attend a vocational training centre ; or
- (iii) attend a therapeutic centre ; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place ; or
- (v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

19. Powers of Children's Court.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere ;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.—(1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, alongwith evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may—

- (i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay ;

(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.

21. Order that may not be passed against a child in conflict with law.—No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

22. Proceeding under Chapter VIII of the Code of Criminal Procedure not to apply against Child.—Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.

23. No joint proceedings of child in conflict with law and person not a child.—(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

24. Removal of disqualification on the findings of an offence.—(1) Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

(2) The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court.

25. Special provision in respect of pending cases.—Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.

26. Provision with respect of run away child in conflict with law.—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge of a child in conflict with law who has run away from a special home or an observation home or a place of safety or from the care of a person or institution under whom the child was placed under this Act.

(2) The child referred to in sub-section (1) shall be produced, within twenty-four hours, preferably before the Board which passed the original order in respect of that child, if possible, or to the nearest Board where the child is found.

(3) The Board shall ascertain the reasons for the child having run away and pass appropriate orders for the child to be sent back either to the institution or person from whose custody the child had run away or any other similar place or person, as the Board may deem fit:

Provided that the Board may also give additional directions regarding any special steps that may be deemed necessary, for the best interest of the child.

(4) No additional proceeding shall be instituted in respect of such child.

CHAPTER V

CHILD WELFARE COMMITTEE

27. Child Welfare Committee.—(1) The State Government shall by notification in the *Official Gazette* constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.

(2) The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom atleast one shall be a woman and another, an expert on the matters concerning children.

(3) The District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.

(4) No person shall be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for atleast seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development.

(5) No person shall be appointed as a member unless he possesses such other qualifications as may be prescribed.

(6) No person shall be appointed for a period of more than three years as a member of the Committee.

(7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if—

- (i) he has been found guilty of misuse of power vested on him under this Act ;
- (ii) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence ;
- (iii) he fails to attend the proceedings of the Committee consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.

(8) The District Magistrate shall conduct a quarterly review of the functioning of the Committee.

(9) The Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(10) The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.

28. Procedure in relation to Committee.—(1) The Committee shall meet at least twenty days in a month and shall observe such rules and procedures with regard to the transaction of business at its meetings, as may be prescribed.

(2) A visit to an existing child care institution by the Committee, to check its functioning and well being of children shall be considered as a sitting of the Committee.

(3) A child in need of care and protection may be produced before an individual member of the Committee for being placed in a Children's Home or fit person when the Committee is not in session.

(4) In the event of any difference of opinion among the members of the Committee at the time of taking any decision, the opinion of the majority shall prevail but where there is no such majority, the opinion of the Chairperson shall prevail.

(5) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding :

Provided that there shall be at least three members present at the time of final disposal of the case.

29. Powers of Committee.—(1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

30. Functions and responsibilities of Committee.—The functions and responsibilities of the Committee shall include—

- (i) taking cognizance of and receiving the children produced before it ;
- (ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act ;
- (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee ;
- (iv) conducting inquiry for declaring fit persons for care of children in need of care and protection ;
- (v) directing placement of a child in foster care ;
- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard ;
- (vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution ;
- (viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government ;
- (ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together ;
- (x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed ;
- (xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry ;
- (xii) taking *suo motu* cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members ;
- (xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) ;
- (xiv) dealing with cases referred by the Board under sub-section (2) of section 17 ;
- (xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government ;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be ;

(xvii) accessing appropriate legal services for children ;

(xviii) such other functions and responsibilities, as may be prescribed.

CHAPTER VI

PROCEDURE IN RELATION TO CHILDREN IN NEED OF CARE AND PROTECTION

31. Productions before Committee.—(1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely :—

(i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force ;

(ii) any public servant ;

(iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government ;

(iv) Child Welfare Officer or probation officer ;

(v) any social worker or a public spirited citizen ;

(vi) by the child himself ; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home :

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children's home or fit facility or fit person, as the case may be, during the period of the inquiry.

32. Mandatory reporting regarding a child found separated from guardian.—(1) Any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be.

(2) The information regarding a child referred to in sub-section (1) shall be mandatorily uploaded on a portal as may be specified by the Central Government or the Committee or the District Child Protection Unit or the child care institution, as the case may be.

33. Offence of non-reporting.—If information regarding a child as required under section 32 is not given within the period specified in the said section, then, such act shall be regarded as an offence.

34. Penalty for non-reporting.—Any person who has committed an offence under section 33 shall be liable to imprisonment up to six months or fine of ten thousand rupees or both.

35. Surrender of children.—(1) A parent or guardian, who for physical, emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee.

(2) If, after prescribed process of inquiry and counselling, the Committee is satisfied, a surrender deed shall be executed by the parent or guardian, as the case may be, before the Committee.

(3) The parents or guardian who surrendered the child, shall be given two months time to reconsider their decision and in the intervening period the Committee shall either allow, after

due inquiry, the child to be with the parents or guardian under supervision, or place the child in a Specialised Adoption Agency, if he or she is below six years of age, or a children's home if he is above six years.

36. Inquiry.—(1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer :

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

(2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child :

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

(3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years :

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

(4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5) After review under sub-section (4), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required :

Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7) In case of any delay in the constitution of a new Committee under sub-section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

37. Orders passed regarding a child in need of care and protection.—(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely :—

(a) declaration that a child is in need of care and protection ;

(b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker ;

(c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child ;

- (d) placement of the child with fit person for long term or temporary care ;
- (e) foster care orders under section 44 ;
- (f) sponsorship orders under section 45 ;

(g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies ;

(h) declaration that the child is legally free for adoption under section 38.

(2) The Committee may also pass orders for —

- (i) declaration of fit persons for foster care ;
- (ii) getting after care support under section 46 of the Act ; or
- (iii) any other order related to any other function as may be prescribed.

38. Procedure for declaring a child legally free for adoption.—(1) In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption :

Provided that such declaration shall be made within a period of two months from the date of production of the child, for children who are up to two years of age and within four months for children above two years of age :

Provided further that notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act.

(2) In case of surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately on completion of the period specified in section 35, for declaring the child legally free for adoption.

(3) Notwithstanding anything contained in any other law for the time being in force, a child of a mentally retarded parents or a unwanted child of victim of sexual assault, such child may be declared free for adoption by the Committee, by following the procedure under this Act.

(4) The decision to declare an orphan, abandoned or surrendered child as legally free for adoption shall be taken by at least three members of the Committee.

(5) The Committee shall inform the State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed, every month.

CHAPTER VII

REHABILITATION AND SOCIAL RE-INTEGRATION

39. Process of rehabilitation and social re-intergration.—(1) The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care :

Provided that all efforts shall be made to keep siblings placed in institutional or non-institutional care, together, unless it is in their best interest not to be kept together.

(2) For children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board.

(3) The children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed.

(4) The Children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to re-integrate into the mainstream of the society.

40. Restoration of child in need of care and protection.—(1) The restoration and protection of a child shall be the prime objective of any Children's Home, Specialised Adoption Agency or open shelter.

(2) The Children's Home, Specialised Adoption Agency or an open shelter, as the case may be, shall take such steps as are considered necessary for the restoration and protection of a child deprived of his family environment temporarily or permanently where such child is under their care and protection.

(3) The Committee shall have the powers to restore any child in need of care and protection to his parents, guardian or fit person, as the case may be, after determining the suitability of the parents or guardian or fit person to take care of the child, and give them suitable directions.

Explanation.—For the purposes of this section, "restoration and protection of a child" means restoration to—

- (a) parents ;
- (b) adoptive parents ;
- (c) foster parents ;
- (d) guardian ; or
- (e) fit person.

41. Registration of child care institutions.—(1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially, for housing children in need of care and protection or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, within a period of six months from the date of commencement of this Act, regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not :

Provided that the institutions having valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) on the date of commencement of this Act shall be deemed to have been registered under this Act.

(2) At the time of registration under this section, the State Government shall determine and record the capacity and purpose of the institution and shall register the institution as a Children's Home or open shelter or Specialised Adoption Agency or observation home or special home or place of safety, as the case may be.

(3) On receipt of application for registration under sub-section (1), from an existing or new institution housing children in need of care and protection of children in conflict with law, the State Government may grant provisional registration, within one month from the date of receipt of application, for a maximum period of six months, in order to bring such institution under the purview of this Act, and shall determine the capacity of the Home which shall be mentioned in the registration certificate :

Provided that if the said institution does not fulfill the prescribed criteria for registration, within the period specified in sub-section (1), the provisional registration shall stand cancelled and the provisions of sub-section (5) shall apply.

(4) If the State Government does not issue a provisional registration certificate within one month from the date of application, the proof of receipt of application for registration shall be treated as provisional registration to run an institution for a maximum period of six months.

(5) If the application for registration is not disposed of within six months by any officer or officers of any State Government, it shall be regarded as dereliction of duty on their part by their higher controlling authority and appropriate departmental proceedings shall be initiated.

(6) The period of registration of an institution shall be five years, and it shall be subject to renewal in every five years.

(7) The State Government may, after following the procedure as may be prescribed, cancel or withhold registration, as the case may be, of such institutions which fail to provide rehabilitation and reintegration services as specified in section 53 and till such time that the registration of an institution is renewed or granted, the State Government shall manage the institution.

(8) Any child care institution registered under this section shall be duty bound to admit children, subject to the capacity of the institution, as directed by the Committee, whether they are receiving grants from the Central Government or, as the case may be, the State Government or not.

(9) Notwithstanding anything contained in any other law for the time being in force, the inspection committee appointed under section 54, shall have the powers to inspect any institution housing children, even if not registered under this Act to determine whether such institution is housing children in need of care and protection.

42. Penalty for non-registration of child care institutions.—Any person, or persons, in-charge of an institution housing children in need of care and protection and children in conflict with law, who fails to comply with the provisions of sub-section (1) of section 41, shall be punished with imprisonment which may extend to one year or a fine of not less than one lakh rupees or both :

Provided that every thirty days delay in applying for registration shall be considered as a separate offence.

43. Open shelter.—(1) The State Government may establish and maintain, by itself or through voluntary or non-governmental organisations, as many open shelters as may be required, and such open shelters shall be registered as such, in the manner as may be prescribed.

(2) The open shelters referred to in sub-section (1) shall function as a community based facility for children in need of residential support, on short term basis, with the objective of protecting them from abuse or weaning them, or keeping them, away from a life on the streets.

(3) The open shelters shall send every month information, in the manner as may be prescribed, regarding children availing the services of the shelter, to the District Child Protection Unit and the Committee.

44. Foster care.—(1) The children in need of care and protection may be placed in foster care, including group foster care for their care and protection through orders of the Committee, after following the procedure as may be prescribed in this regard, in a family which does not include the child's biological or adoptive parents or in an unrelated family recognised as suitable for the purpose by the State Government, for a short or extended period of time.

(2) The selection of the foster family shall be based on family's ability, intent, capacity and prior experience of taking care of children.

(3) All efforts shall be made to keep siblings together in foster families, unless it is in their best interest not to be kept together.

(4) The State Government, after taking into account the number of children, shall provide monthly funding for such foster care through District Child Protection Unit after following the procedure, as may be prescribed, for inspection to ensure well being of the children.

(5) In cases where children have been placed in foster care for the reason that their parents have been found to be unfit or incapacitated by the Committee, the child's parents may visit the child in the foster family at regular intervals, unless the Committee feels that such visits are not in the best interest of the child, for reasons to be recorded therefor ; and eventually, the child may return to the parent's homes once the parents are determined by the Committee to be fit to take care of the child.

(6) The foster family shall be responsible for providing education, health and nutrition to the child and shall ensure the overall well being of the child in such manner, as may be prescribed.

(7) The State Government may make rules for the purpose of defining the procedure, criteria and the manner in which foster care services shall be provided for children.

(8) The inspection of foster families shall be conducted every month by the Committee in the form as may be prescribed to check the well-being of the child and whenever a foster family is found lacking in taking care of the child, the child shall be removed from that foster family and shifted to another foster family as the Committee may deem fit.

(9) No child regarded as adoptable by the Committee shall be given for long-term foster care.

45. Sponsorship.—(1) The State Government shall make rules for the purpose of undertaking various programmes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship.

(2) The criteria for sponsorship shall include,—

(i) where mother is a widow or divorced or abandoned by family ;

(ii) where children are orphan and are living with the extended family ;

(iii) where parents are victims of life threatening disease ;

(iv) where parents are incapacitated due to accident and unable to take care of children both financially and physically.

(3) The duration of sponsorship shall be such as may be prescribed.

(4) The sponsorship programme may provide supplementary support to families, to Children's Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life.

46. After care of children leaving child care institution.—Any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child's re-integration into the mainstream of the society in the manner as may be prescribed.

47. Observation homes.—(1) The State Government shall establish and maintain in every district or a group of districts, either by itself, or through voluntary or non-governmental organisations, observation homes, which shall be registered under section 41 of this Act, for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act.

(2) Where the State Government is of the opinion that any registered institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of such child alleged to be in conflict with law during the pendency of any inquiry under this Act, it may register such institution as an observation home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management and monitoring of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a child alleged to be in conflict with law and the circumstances under which, and the manner in which, the registration of an observation home may be granted or withdrawn. (4) Every child alleged to be in conflict with law who is not placed under the charge of parent or guardian and is sent to an observation home shall be segregated according to the child's age and gender, after giving due consideration to physical and mental status of the child and degree of the offence committed.

48. Special homes.—(1) The State Government may establish and maintain either by itself or through voluntary or non-governmental organisations, special homes, which shall be registered as such, in the manner as may be prescribed, in every district or a group of districts, as may be required for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board made under section 18.

(2) The State Government may, by rules, provide for the management and monitoring of special homes, including the standards and various types of services to be provided by them which are necessary for social re-integration of a child, and the circumstances under which, and the manner in which, the registration of a special home may be granted or withdrawn.

(3) The rules made under sub-section (2) may also provide for the segregation and separation of children found to be in conflict with law on the basis of age, gender, the nature of offence committed by them and the child's mental and physical status.

49. Place of safety.—(1) The State Government shall set up atleast one place of safety in a State registered under section 41, so as to place a person above the age of eighteen years or child in conflict with law, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence.

(2) Every place of safety shall have separate arrangement and facilities for stay of such children or persons during the process of inquiry and children or persons convicted of committing an offence.

(3) The State Government may, by rules, prescribe the types of places that can be designated as place of safety under sub-section (1) and the facilities and services that may be provided therein.

50. Children's Home.—(1) The State Government may establish and maintain, in every district or group of districts, either by itself or through voluntary or non-governmental organisations, Children's Homes, which shall be registered as such, for the placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation.

(2) The State Government shall designate any Children's Home as a home fit for children with special needs delivering specialised services, depending on requirement.

(3) The State Government may, by rules, provide for the monitoring and management of Children's Homes including the standards and the nature of services to be provided by them, based on individual care plans for each child.

51. Fit facility.—(1) The Board or the Committee shall recognise a facility being run by a Governmental organisation or a voluntary or non-governmental organisation registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child in such manner as may be prescribed.

(2) The Board or the Committee may withdraw the recognition under sub-section (1) for reasons to be recorded in writing.

52. Fit person.—(1) The Board or the Committee shall, after due verification of credentials, recognise any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period and in the manner as may be prescribed.

(2) The Board or Committee, as the case may be, may withdraw the recognition granted under sub-section (1) for reasons to be recorded in writing.

53. Rehabilitation and re-intergration services in institutions registered under this Act and management thereof.—(1) The services that shall be provided, by the institutions registered under this Act in the process of rehabilitation and re-integration of children, shall be in such manner as may be prescribed, which may include—

(i) basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards ;

(ii) equipment such as wheel-chairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs ;

(iii) appropriate education, including supplementary education, special education, and appropriate education for children with special needs:

Provided that for children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) shall apply ;

- (iv) skill development ;
- (v) occupational therapy and life skill education ;
- (vi) mental health interventions, including counselling specific to the need of the child ;
- (vii) recreational activities including sports and cultural activities ;
- (viii) legal aid where required ;
- (ix) referral services for education, vocational training, de-addiction, treatment of diseases where required ;
- (x) case management including preparation and follow up of individual care plan ;
- (xi) birth registration ;
- (xii) assistance for obtaining the proof of identity, where required ; and
- (xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services.

(2) Every institution shall have a Management Committee, to be set up in a manner as may be prescribed, to manage the institution and monitor the progress of every child.

(3) The officer in-charge of every institution, housing children above six years of age, shall facilitate setting up of children's committees for participating in such activities as may be prescribed, for the safety and well-being of children in the institution.

54. Inspection of institutions registered under this Act.—(1) The State Government shall appoint inspection committees for the State and district, as the case may be, for all institutions registered or recognised to be fit under this Act for such period and for such purposes, as may be prescribed.

(2) Such inspection committees shall mandatorily conduct visits to all facilities housing children in the area allocated, at least once in three months in a team of not less than three members, of whom at least one shall be a woman and one shall be a medical officer, and submit reports of the findings of such visits within a week of their visit, to the District Child Protection Units or State Government, as the case may be, for further action.

(3) On the submission of the report by the inspection committee within a week of the inspection, appropriate action shall be taken within a month by the District Child Protection Unit or the State Government and a compliance report shall be submitted to the State Government.

55. Evaluation of functioning of structures.—(1) The Central Government or State Government may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government.

(2) In case such independent evaluation is conducted by both the Governments, the evaluation made by the Central Government shall prevail.

CHAPTER VIII

ADOPTION

56. Adoption.—(1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.

(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956).

(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

(5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as per the provisions of section 80.

57. Eligibility of prospective adoptive parents.—(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.

(2) In case of a couple, the consent of both the spouses for the adoption shall be required.

(3) A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.

(4) A single male is not eligible to adopt a girl child.

(5) Any other criteria that may be specified in the adoption regulations framed by the Authority.

58. Procedure for adoption by Indian prospective adoptive parents living in India.—(1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialised Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Specialised Adoption Agency shall prepare the home study report of the prospective adoptive parents and upon finding them eligible, will refer a child declared legally free for adoption to them along with the child study report and medical report of the child, in the manner as provided in the adoption regulations framed by the Authority.

(3) On the receipt of the acceptance of the child from the prospective adoptive parents along with the child study report and medical report of the child signed by such parents, the Specialised Adoption Agency shall give the child in pre-adoption foster care and file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(4) On the receipt of a certified copy of the court order, the Specialised Adoption Agency shall send immediately the same to the prospective adoptive parents.

(5) The progress and wellbeing of the child in the adoptive family shall be followed up and ascertained in the manner as provided in the adoption regulations framed by the Authority.

59. Procedure for inter-country adoption of an orphan or abandoned or surrendered child.—(1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the joint effort of the Specialised Adoption Agency and State Agency within sixty days from the date the child has been declared legally free for adoption, such child shall be free for inter-country adoption:

Provided that children with physical and mental disability, siblings and children above five years of age may be given preference over other children for such inter-country adoption, in accordance with the adoption regulations, as may be framed by the Authority.

(2) An eligible non-resident Indian or overseas citizen of India or persons of Indian origin shall be given priority in inter-country adoption of Indian children.

(3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority.

(4) The authorised foreign adoption agency, or Central Authority, or a concerned Government department, as the case may be, shall prepare the home study report of such prospective adoptive parents and upon finding them eligible, will sponsor their application to

Authority for adoption of a child from India, in the manner as provided in the adoption regulations framed by the Authority.

(5) On the receipt of the application of such prospective adoptive parents, the Authority shall examine and if it finds the applicants suitable, then, it will refer the application to one of the Specialised Adoption Agencies, where children legally free for adoption are available.

(6) The Specialised Adoption Agency will match a child with such prospective adoptive parents and send the child study report and medical report of the child to such parents, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency.

(7) On receipt of the acceptance of the child from the prospective adoptive parents, the Specialised Adoption Agency shall file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(8) On the receipt of a certified copy of the court order, the specialised adoption agency shall send immediately the same to Authority, State Agency and to the prospective adoptive parents, and obtain a passport for the child.

(9) The Authority shall intimate about the adoption to the immigration authorities of India and the receiving country of the child.

(10) The prospective adoptive parents shall receive the child in person from the specialised adoption agency as soon as the passport and visa are issued to the child.

(11) The authorised foreign adoption agency, or Central Authority, or the concerned Government department, as the case may be, shall ensure the submission of progress reports about the child in the adoptive family and will be responsible for making alternative arrangement in the case of any disruption, in consultation with Authority and concerned Indian diplomatic mission, in the manner as provided in the adoption regulations framed by the Authority.

(12) A foreigner or a person of Indian origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to Authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further necessary actions as provided in the adoption regulations framed by the Authority.

60. Procedure for inter-country relative adoption.—(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the court and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.

61. Court procedure and penalty against payment in consideration of adoption.—(1) Before issuing an adoption order, the court shall satisfy itself that —

(a) the adoption is for the welfare of the child ;

(b) due consideration is given to the wishes of the child having regard to the age and understanding of the child ; and

(c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

(2) The adoption proceedings shall be held *in camera* and the case shall be disposed of by the court within a period of two months from the date of filing.

62. Additional procedural requirements and documentation.—(1) The documentation and other procedural requirements, not expressly provided in this Act with regard to the adoption of an orphan, abandoned and surrendered child by Indian prospective adoptive parents living in India, or by non-resident Indian or overseas citizen of India or person of Indian origin or foreigner prospective adoptive parents, shall be as per the adoption regulations framed by the Authority.

(2) The specialised adoption agency shall ensure that the adoption case of prospective adoptive parents is disposed of within four months from the date of receipt of application and the authorised foreign adoption agency, Authority and State Agency shall track the progress of the adoption case and intervene wherever necessary, so as to ensure that the time line is adhered to.

63. Effect of adoption.—A child in respect of whom an adoption order is issued by the court, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family :

Provided that any property which has vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.

64. Reporting of adoption.—Notwithstanding anything contained in any other law for the time being in force, information regarding all adoption orders issued by the concerned courts, shall be forwarded to Authority on monthly basis in the manner as provided in the adoption regulations framed by the Authority, so as to enable Authority to maintain the data on adoption.

65. Specialised Adoption Agencies.—(1) The State Government shall recognise one or more institutions or organisations in each district as a Specialised Adoption Agency, in such manner as may be provided in the adoption regulations framed by the Authority, for the rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care.

(2) The State Agency shall furnish the name, address and contact details of the Specialised Adoption Agencies along with copies of certificate or letter of recognition or renewal to Authority, as soon as the recognition or renewal is granted to such agencies.

(3) The State Government shall get every Specialised Adoption Agency inspected at least once in a year and take necessary remedial measures, if required.

(4) In case any Specialised Adoption Agency is in default in taking necessary steps on its part as provided in this Act or in the adoption regulations framed by the Authority, for getting an orphan or abandoned or surrendered child legally free for adoption from the Committee or in completing the home study report of the prospective adoptive parents or in obtaining adoption order from the court within the stipulated time, such Specialised Adoption Agency shall be punishable with a fine which may extend up to fifty thousand rupees and in case of repeated default, the recognition of the Specialised Adoption Agency shall be withdrawn by the State Government.

66. Adoption of children residing in institutions not registered as adoption agencies.—(1) All the institutions registered under this Act, which may not have been recognised as Specialised Adoption Agencies, shall also ensure that all orphan or abandoned or surrendered children under their care are reported, produced and declared legally free for adoption, by the Committee as per the provisions of section 38.

(2) All institutions referred to in sub-section (1) shall develop formal linkages with nearby Specialised Adoption Agency and shall furnish details of the children declared legally free for adoption to that Specialised Adoption Agency along with all relevant records in the manner as may be prescribed, for the placement of such children in adoption.

(3) If any such institution contravenes the provisions of sub-section (1) or sub-section (2), it shall be liable to fine of fifty thousand rupees for each instance to be imposed by the registering authority and it may also attract de-recognition in the event of persistent flouting of such provisions.

67. State Adoption Resource Agency.—(1) The State Government shall set up a State Adoption Resource Agency for dealing with adoptions and related matters in the State under the guidance of Authority.

(2) The State Agency, wherever already exists, shall be deemed to be set up under this Act.

68. Central Adoption Resource Authority.—The Central Adoption Resource Agency existing before the commencement of this Act, shall be deemed to have been constituted as the Central Adoption Resource Authority under this Act to perform the following functions, namely :—

(a) to promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency ;

(b) to regulate inter-country adoptions ;

(c) to frame regulations on adoption and related matters from time to time as may be necessary ;

(d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption ;

(e) any other function as may be prescribed.

69. Steering Committee of Authority.—(1) The Authority shall have a Steering Committee with following members :

(a) Secretary, Ministry of Women and Child Development, Government of India, who shall be the Chairperson—*ex officio* ;

(b) Joint Secretary, Ministry of Women and Child Development, Government of India, dealing with Authority—*ex officio* ;

(c) Joint Secretary, Ministry of Women and Child Development, Government of India, dealing with Finance—*ex officio* ;

(d) one State Adoption Resource Agency and two Specialised Adoption Agencies ;

(e) one adoptive parent and one adoptee ;

(f) one advocate or a professor having at least ten years of experience in family law ;

(g) Member-Secretary, who shall also be Chief Executive Officer of the organisation.

(2) Criteria for the selection or nomination of the Members mentioned at (d) to (f), their tenure as well as the terms and conditions of their appointment shall be such as may be prescribed.

(3) The Steering Committee shall have the following functions, namely :—

(a) to oversee the functioning of Authority and review its working from time to time so that it operates in most effective manner ;

(b) to approve the annual budget, annual accounts and audit reports as well as the action plan and annual report of Authority ;

(c) to adopt the recruitment rules, service rules, financial rules of Authority as well as the other regulations for the exercise of the administrative and programmatic powers within the organisation, with the prior approval of the Central Government ;

(d) any other function that may be vested with it by the Central Government from time to time.

(4) The Steering Committee shall meet once in a month in the manner as may be prescribed.

(5) The Authority shall function from its headquarter and through its regional offices as may be set up as per its functional necessity.

70. Powers of Authority.—(1) For the efficient performance of its functions, Authority shall have the following powers, namely :—

(a) to issue instructions to any Specialised Adoption Agency or a Children Home or any child care institution housing any orphan, abandoned or surrendered child, any State Agency or any authorised foreign adoption agency and such directions shall be complied by such agencies ;

(b) recommending to the concerned Government or Authority to take appropriate action against any official or functionary or institution under its administrative control, in case of persistent non-compliance of the instructions issued by it ;

(c) forwarding any case of persistent non-compliance of its instructions by any official or functionary or institution to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the same as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974) ;

(d) any other power that may be vested with it by the Central Government.

(2) In case of any difference of opinion in an adoption case, including the eligibility of prospective adoptive parents or of a child to be adopted, the decision of Authority shall prevail.

71. Annual Report of Authority.—(1) The Authority shall submit an annual report to the Central Government in such manner as may be prescribed.

(2) The Central Government shall cause the annual report of Authority to be laid before each House of Parliament.

72. Grants by Central Government.—(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Authority by way of grants such sums of money as the Central Government may think fit for being utilised for performing the functions of Authority under this Act.

(2) The Authority may spend such sums of money as it thinks fit for performing the functions, as prescribed under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

73. Accounts and audit of Authority.—(1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of Authority shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall, have the same rights and privileges and the Authority in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Authority.

(5) The Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER IX

OTHER OFFENCES AGAINST CHILDREN

74. Prohibition on disclosure of identity of children.—(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any

inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published :

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

75. Punishment for cruelty to child.—Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend upto five years, and fine which may extend upto five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended upto ten years and shall also be liable to fine of five lakhs rupees.

76. Employment of child for begging.—(1) Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that, if for the purpose of begging, the person amputates or maims the child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend upto ten years, and shall also be liable to fine of five lakh rupees.

(2) Whoever, having the actual charge of, or control over the child, abets the commission of an offence under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2:

Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.

77. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child.—Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend upto one lakh rupees.

78. *Using a child for vending peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance.*—Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine upto one lakh rupees.

79. *Exploitation of a child employee.*—Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Explanation.— For the purposes of this section, the term “employment” shall also include selling goods and services, and entertainment in public places for economic gain.

80. *Punitive measures for adoption without following prescribed procedures.*—If any person or organisation offers or gives or receives, any orphan, abandoned or surrendered child, for the purpose of adoption without following the provisions or procedures as provided in this Act, such person or organisation shall be punishable with imprisonment of either description for a term which may extend upto three years, or with fine of one lakh rupees, or with both :

Provided in case where the offence is committed by a recognised adoption agency, in addition to the above punishment awarded to the persons in-charge of, and responsible for the conduct of the day-to-day affairs of the adoption agency, the registration of such agency under section 41 and its recognition under section 65 shall also be withdrawn for a minimum period of one year.

81. *Sale and procurement of children for any purpose.*—Any person who sells or buys a child for any purpose shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees :

Provided that where such offence is committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home, the term of imprisonment shall not be less than three years and may extend upto seven years.

82. *Corporal punishment.*—(1) Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both.

(2) If a person employed in an institution referred to in sub-section (1), is convicted of an offence under that sub-section, such person shall also be liable for dismissal from service, and shall also be debarred from working directly with children thereafter.

(3) In case, where any corporal punishment is reported in an institution referred to in sub-section (1) and the management of such institution does not cooperate with any inquiry or comply with the orders of the Committee or the Board or court or State Government, the person in-charge of the management of the institution shall be liable for punishment with imprisonment for a term not less than three years and shall also be liable to fine which may extend to one lakh rupees.

83. *Use of child by militant groups or other adults.*—(1) Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.

(2) Any adult or an adult group uses children for illegal activities either individually or as a gang shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.

84. *Kidnapping and abduction of child.*—For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code (45 of 1860), shall *mutatis mutandis* apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

85. *Offences committed on disabled children.*—Whoever commits any of the offences referred to in this Chapter on any child who is disabled as so certified by a medical practitioner, then, such person shall be liable to twice the penalty provided for such offence.

Explanation.—For the purposes of this Act, the term “disability” shall have the same meaning as assigned to it under clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).

86. *Classification of offences and designated court.*—(1) Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children’s Court.

(2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Magistrate of First Class.

(3) Where an offence, under this Act, is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable, bailable and triable by any Magistrate.

87. *Abetment.*—Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with the punishment provided for that offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

88. *Alternative punishment.*—Where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the offender found guilty of such offence shall be liable for punishment under such law which provides for punishment which is greater in degree.

89. *Offence committed by child under this Chapter.*—Any child who commits any offence under this Chapter shall be considered as a child in conflict with law under this Act.

CHAPTER X

MISCELLANEOUS

90. *Attendance of parent or guardian of child.*—The Committee or the Board, as the case may be, before which a child is brought under any of the provisions of this Act, may, whenever it so thinks fit, require any parent or guardian having the actual charge of the child to be present at any proceeding in respect of that child.

91. *Dispensing with attendance of child.*—(1) If, at any stage during the course of an inquiry, the Committee or the Board is satisfied that the attendance of the child is not essential for the purpose of inquiry, the Committee or the Board, as the case may be, shall dispense with the attendance of a child and limit the same for the purpose of recording the statement and subsequently, the inquiry shall continue even in the absence of the child concerned, unless ordered otherwise by the Committee or the Board.

(2) Where the attendance of a child is required before the Board or the Committee, such child shall be entitled to travel reimbursement for self and one escort accompanying the child as per actual expenditure incurred, by the Board, or the Committee or the District Child Protection Unit, as the case may be.

92. *Placement of a child suffering from disease requiring prolonged medical treatment in an approved place.*—When a child, who has been brought before the Committee or the Board, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental

complaint that will respond to treatment, the Committee or the Board, as the case may be, may send the child to any place recognised as a fit facility as prescribed for such period as it may think necessary for the required treatment.

93. *Transfer of a child who is mentally ill or addicted to alcohol or other drugs.*—(1) Where it appears to the Committee or the Board that any child kept in a special home or an observation home or a Children's Home or in an institution in pursuance of the provisions of this Act, is a mentally ill person or addicted to alcohol or other drugs which lead to behavioural changes in a person, the Committee or the Board, may order removal of such child to a psychiatric hospital or psychiatric nursing home in accordance with the provisions of the Mental Health Act, 1987 (14 of 1987) or the rules made thereunder.

(2) In case the child had been removed to a psychiatric hospital or psychiatric nursing home under sub-section (1), the Committee or the Board may, on the basis of the advice given in the certificate of discharge of the psychiatric hospital or psychiatric nursing home, order to remove such child to an Integrated Rehabilitation Centre for Addicts or similar centres maintained by the State Government for mentally ill persons (including the persons addicted to any narcotic drug or psychotropic substance) and such removal shall be only for the period required for the inpatient treatment of such child.

Explanation.—For the purposes of this sub-section,—

(a) “Integrated Rehabilitation Centre for Addicts” shall have the meaning assigned to it under the scheme called “Central Sector Scheme of Assistance for Prevention of Alcoholism and Substance (Drugs) Abuse and for Social Defence Services” framed by the Central Government in the Ministry of Social Justice and Empowerment or any other corresponding scheme for the time being in force ;

(b) “mentally ill person” shall have the same meaning assigned to it in clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) ;

(c) “psychiatric hospital” or “psychiatric nursing home” shall have the same meaning assigned to it in clause (q) of section 2 of the Mental Health Act, 1987 (14 of 1987).

94. *Presumption and determination of age.*—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available ; and in the absence thereof ;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat ;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board :

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

95. *Transfer of a child to place of residence.*—(1) If during the inquiry it is found that a child hails from a place outside the jurisdiction, the Board or Committee, as the case may be, shall, if satisfied after due inquiry that it is in the best interest of the child and after due

consultation with the Committee or the Board of the child's home district, order the transfer of the child, as soon as possible, to the said Committee or the Board, alongwith relevant documents and following such procedure as may be prescribed :

Provided that such transfer can be made in case of a child in conflict with law, only after the inquiry has been completed and final order passed by the Board:

Provided further that in case of inter-State transfer, the child shall be, if convenient, handed over to the Committee or the Board, as the case may be, of the home district of the child, or to the Committee or the Board in the capital city of the home State.

(2) Once the decision to transfer is finalised, the Committee or Board, as the case may be, shall give an escort order to the Special Juvenile Police Unit to escort the child, within fifteen days of receiving such order :

Provided that a girl child shall be accompanied by a woman police officer :

Provided further that where a Special Juvenile Police Unit is not available, the Committee or Board, as the case may be, shall direct the institution where the child is temporarily staying or District Child Protection Unit, to provide an escort to accompany the child during travel.

(3) The State Government shall make rules to provide for travelling allowance to the escorting staff for the child, which shall be paid in advance.

(4) The Committee or the Board, as the case may be, receiving the transferred child will process for restoration or rehabilitation or social re-integration, as provided in this Act.

96. Transfer of child between Children's Homes or special homes or fit facility or fit person in different parts of India.—(1) The State Government may at any time, on the recommendation of a Committee or Board, as the case may be, notwithstanding anything contained in this Act, and keeping the best interest of the child in mind, order the child's transfer from any Children's Home or special home or fit facility or fit person, to a home or facility, within the State with prior intimation to the concerned Committee or the Board :

Provided that for transfer of a child between similar home or facility or person within the same district, the Committee or Board, as the case may be, of the said district shall be competent to issue such an order.

(2) If transfer is being ordered by a State Government to an institution outside the State, this shall be done only in consultation with the concerned State Government.

(3) The total period of stay of the child in a Children's Home or a special home shall not be increased by such transfer.

(4) Orders passed under sub-sections (1) and (2) shall be deemed to be operative for the Committee or the Board, as the case may be, of the area to which the child is sent.

97. Release of a child from an institution.—(1) When a child is kept in a Children's Home or special home, on a report of a probation officer or social worker or of Government or a voluntary or non-governmental organisation, as the case may be, the Committee or the Board may consider, the release of such child, either absolutely or on such conditions as it may think fit to impose, permitting the child to live with parents or guardian or under the supervision of any authorised person named in the order, willing to receive and take charge, educate and train the child, for some useful trade or calling or to look after the child for rehabilitation :

Provided that if a child who has been released conditionally under this section, or the person under whose supervision the child has been placed, fails to fulfil such conditions, the Board or Committee may, if necessary, cause the child to be taken charge of and to be placed back in the concerned home.

(2) If the child has been released on a temporary basis, the time during which the child is not present in the concerned home in pursuance of the permission granted under sub-section (1) shall be deemed to be part of the time for which the child is liable to be kept in the children or special home :

Provided that in case of a child in conflict with law fails to fulfil the conditions set by the Board as mentioned in sub-section (1), the time for which he is still liable to be kept in the institution shall be extended by the Board for a period equivalent to the time which lapses due to such failure.

98. Leave of absence to a child placed in an institution.—(1) The Committee or the Board, as the case may be, may permit leave of absence to any child, to allow him, on special occasions like examination, marriage of relatives, death of kith or kin or accident or serious illness of parent or any emergency of like nature, under supervision, for a period generally not exceeding seven days in one instance, excluding the time taken in journey.

(2) The time during which a child is absent from an institution where he is placed, in pursuance of such permission granted under this section, shall be deemed to be part of the time for which he is liable to be kept in the Children's Home or special home.

(3) If a child refuses, or has failed to return to the Children's Home or special home, as the case may be, on the leave period being exhausted or permission being revoked or forfeited, the Board or Committee may, if necessary, cause him to be taken charge of and to be taken back to the concerned home :

Provided that when a child in conflict with law has failed to return to the special home on the leave period being exhausted or on permission being revoked or forfeited, the time for which he is still liable to be kept in the institution shall be extended by the Board for a period equivalent to the time which lapses due to such failure.

99. Reports to be treated as confidential.—(1) All reports related to the child and considered by the Committee or the Board shall be treated as confidential :

Provided that the Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.

(2) Notwithstanding anything contained in this Act, the victim shall not be denied access to their case record, orders and relevant papers.

100. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government, or the State Government or any person acting under the directions of the Central Government or State Government, as the case may be, in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

101. Appeals.—(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate :

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,—

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years ; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).

102. Revision.—The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit :

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

103. Procedure in inquiries, appeals and revision proceedings.—(1) Save as otherwise expressly provided by this Act, a Committee or a Board while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trial of summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

104. Power of the Committee or the Board to amend its own orders.—(1) Without prejudice to the provisions for appeal and revision contained in this Act, the Committee or the Board may, on an application received in this behalf, amend any orders passed by itself, as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act :

Provided that during the course of hearing for amending any such orders, there shall be at least two members of the Board of which one shall be the Principal Magistrate and at least three members of the Committee and all persons concerned, or their authorised representatives, whose views shall be heard by the Committee or the Board, as the case may be, before the said orders are amended.

(2) Clerical mistakes in orders passed by the Committee or the Board or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Committee or the Board, as the case may be, either on its own motion or on an application received in this behalf.

105. Juvenile Justice fund.—(1) The State Government may create a fund in such name as it thinks fit for the welfare and rehabilitation of the children dealt with under this Act.

(2) There shall be credited to the fund such voluntary donations, contributions or subscriptions as may be made by any individual or organisation.

(3) The fund created under sub-section (1) shall be administered by the Department of the State Government implementing this Act in such manner and for such purposes as may be prescribed.

106. State Child Protection Society and District Child Protection Unit.—Every State Government shall constitute a Child Protection Society for the State and Child Protection Unit for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children with a view to ensure the implementation of this Act, including the establishment and maintenance of institutions under this Act, notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed.

107. Child Welfare Police Officer and Special Juvenile Police Unit.—(1) In every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.

(2) To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman.

(3) All police officers of the Special Juvenile Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively.

(4) Special Juvenile Police Unit also includes Railway police dealing with children.

108. Public awareness on provisions of Act.—The Central Government and every State Government, shall take necessary measures to ensure that—

(a) the provisions of this Act are given wide publicity through media including television, radio and print media at regular intervals so as to make the general public, children and their parents or guardians aware of such provisions ;

(b) the officers of the Central Government, State Government and other concerned, persons are imparted periodic training on the matters relating to the implementation of the provisions of this Act.

109. Monitoring of implementation of Act.—(1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17 (herein referred to as the National Commission or the State Commission, as the case may be), of the Commissions for Protection of Child rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under the said Act, also monitor the implementation of the provisions of this Act, in such manner, as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in the National Commission or the State Commission under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

(3) The National Commission or, as the case may be, the State Commission, shall also include its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

110. Power to make rules.—(1) The State Government shall, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State *mutatis mutandis* until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(i) manner of inquiry in case of a missing or run away child or whose parents cannot be found under sub-clause (vii) of clause (14) of Section 2 ;

(ii) responsibilities of the Child Welfare Officer attached to a Children's Home under clause (18) of Section 2 ;

(iii) qualifications of the members of the Board under sub-section (2) of Section 4 ;

- (iv) induction training and sensitisation of all members of the Board under sub-section (5) of section 4 ;
- (v) term of office of the members of the Board and the manner in which such member may resign under sub-section (6) of section 4 ;
- (vi) time of the meetings of the Board and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of section 7 ;
- (vii) qualifications, experience and payment of fees of an interpreter or translator under clause (d) of sub-section (3) of section 8 ;
- (viii) any other function of the Board under clause (n) of sub-section (3) of section 8 ;
- (ix) persons through whom any child alleged to be in conflict with law may be produced before the Board and the manner in which such a child may be sent to an observation home or place of safety under sub-section (2) of section 10 ;
- (x) manner in which a person apprehended and not released on bail by the officer-in-charge of the police station may be kept in an observation home until such person is brought before a Board under sub-section (2) of section 12 ;
- (xi) format for information on pendency in the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and District Magistrate on quarterly basis under sub-section (3) of section 16 ;
- (xii) monitoring procedures and list of monitoring authorities under sub-section (2) of section 20 ;
- (xiii) manner in which the relevant records of the child may be destroyed by the Board, police or the court under sub-section (2) of section 24 ;
- (xiv) qualifications of the members of the Child Welfare Committee under sub-section (5) of section 27 ;
- (xv) rules and procedures with regard to transaction of business at the meetings of the Child Welfare Committee under sub-section (1) of section 28 ;
- (xvi) process of restoration of abandoned or lost children to their families under clause (x) of section 30 ;
- (xvii) manner of submitting the report to the Committee and the manner of sending and entrusting the child to Children's Home or fit facility or fit person under sub-section (2) of section 31 ;
- (xviii) manner of holding an inquiry by the Child Welfare Committee under sub-section (1) of section 36 ;
- (xix) manner in which a child may be sent to a Specialised Adoption Agency if the child is below six years of age, Children's Home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child including manner in which situation of the child placed in a Children's Home or with a fit facility or person or foster family, may be reviewed by the Committee under sub-section (3) of section 36 ;
- (xx) manner in which a quarterly report may be submitted by the Committee to the District Magistrate for review of pendency of cases under sub-section (4) of section 36 ;
- (xxi) any other order related to any other function of the Committee under clause (iii) of sub-section (2) of section 37 ;
- (xxii) information to be given every month by the Committee to State Agency and Authority regarding number of children declared legally free for adoption and number of cases pending under sub-section (5) of section 38 ;
- (xxiii) manner in which all institutions under this Act shall be registered under sub-section (1) of section 41 ;
- (xxiv) procedure for cancelling or with holding registration of an institution that fails to provide rehabilitation and re-integration services under sub-section (7) of section 41 ;
- (xxv) manner in which information shall be sent every month by the open shelter to the District Child Protection Unit and Committee under sub-section (3) of section 43 ;

(xxvi) procedure for placing children in foster care including group foster care under sub-section (1) of section 44 ;

(xxvii) procedure for inspection of children in foster care under sub-section (4) of section 44 ;

(xxviii) manner in which foster family shall provide education, health and nutrition to the child under sub-section (6) of section 44 ;

(xxix) procedure and criteria in which foster care services shall be provided to children under sub-section (7) of section 44 ;

(xxx) format for inspection of foster families by the Committee to check the well being of children under sub-section (8) of section 44 ;

(xxxi) purpose of undertaking various programmes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship under sub-section (1) of section 45 ;

(xxxii) duration of sponsorship under sub-section (3) of section 45 ;

(xxxiii) manner of providing financial support to any child leaving institutional care on completing eighteen years of age under section 46 ;

(xxxiv) management and monitoring of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a child alleged to be in conflict with law and the circumstances under which, and the manner in which, the registration of an observation home may be granted or withdrawn under sub-section (3) of section 47 ;

(xxxv) management and monitoring of special homes including the standards and various types of services to be provided to them under sub-section (2) and sub-section (3) of section 48 ;

(xxxvi) monitoring and management of children's homes including the standards and the nature of services to be provided by them, based on individual care plans for each child under sub-section (3) of section 50 ;

(xxxvii) manner in which a Board or the Committee shall recognise, a facility being run by a Governmental organisation or a voluntary or non-governmental organisation registered under any law for the time being in force, fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child under sub-section (1) of section 51 ;

(xxxviii) procedure of verification of credentials, for recognising any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period by the Board or the Committee under sub-section (1) of section 52 ;

(xxxix) manner in which services shall be provided by an institution under this Act for rehabilitation and re-integration of children and standards for basic requirements such as food, shelter, clothing and medical attention under sub-section (1) of section 53 ;

(xl) manner in which Management Committee shall be set up by each institution for management of the institution and monitoring of the progress of every child under sub-section (2) of section 53 ;

(xli) activities that may be taken up by children's committees under sub-section (3) of section 53 ;

(xlii) appointment of inspection committees for all institutions registered or recognised fit, for the State and district under sub-section (1) of section 54 ;

(xliii) manner in which Central Government or State Government may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, including the period and through persons or institutions under sub-section (1) of section 55 ;

(xliv) manner in which institutions shall furnish details of children declared legally free for adoption to the Specialised Adoption Agency under sub-section (2) of section 66 ;

(xlv) any other function of the Authority under clause (e) of section 68 ;

(xlvi) criteria for the selection or nomination of the Members of the Steering Committee of the Authority and their tenure as well as the terms and conditions of their appointment under sub-section (2) of section 69 ;

(*xlvi*) manner in which Steering Committee of the Authority shall meet under sub-section (4) of section 69 ;

(*xlvi*) manner in which the Authority shall submit an annual report to the Central Government under sub-section (1) of section 71 ;

(*xlvi*) functions of the Authority under sub-section (2) of section 72 ;

(*i*) manner in which the Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 73 ;

(*ii*) period that the Committee or Board may think necessary for the treatment of children who are found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment to a fit facility under section 92 ;

(*iii*) procedure for transfer of child under sub-section (1) of section 95 ;

(*iii*) provision for travelling allowance to the escorting staff for the child under sub-section (3) of section 95 ;

(*iv*) procedure to be followed by the Committee or a Board while holding any inquiry, appeal or revision under sub-section (1) of section 103 ;

(*v*) manner in which juvenile justice fund shall be administered under sub-section (3) of section 105 ;

(*vi*) functioning of the Child Protection Society for the State and Child Protection Units for every district under section 106 ;

(*vii*) to enable the National Commission, or as the case may be, the State Commission to monitor implementation of the provisions of this Act under sub-section (1) of section 109 ;

(*viii*) any other matter which is required to be, or may be, prescribed.

(3) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

111. Repeal and savings.—(1) The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

112. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty :

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 1st January 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December 2015, and is hereby published for general information :—

THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015

(No. 3 OF 2016)

[31st December, 2015.]

An Act to amend the Arbitration and Conciliation Act, 1996.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows :—

1. Short title and commencement.—(1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on the 23rd October, 2015.

2. Amendment of section 2.—In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 2,—

(I) in sub-section (1),—

(A) for clause (e), the following clause shall be substituted, namely :—

‘(e) “Court” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes ;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court ;’ ;

(B) in clause (f), in sub-clause (iii), the words “a company or” shall be omitted ;

(II) in sub-section (2), the following proviso shall be inserted, namely :—

“Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.”.

3. Amendment of section 7.—In section 7 of the principal Act, in sub-section (4), in clause (b), after the words “or other means of telecommunication”, the words “including communication through electronic means” shall be inserted.

4. Amendment of section 8.—In section 8 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of

submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.” ;

(ii) in sub-section (2), the following proviso shall be inserted, namely :—

“Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.”.

5. Amendment of section 9.—Section 9 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely :—

“(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”.

6. Amendment of section 11.—In section 11 of the principal Act,—

(i) in sub-sections (4), (5) and (6), for the words “the Chief Justice or any person or institution designated by him” wherever they occur, the words “the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court” shall be substituted ;

(ii) after sub-section (6), the following sub-sections shall be inserted, namely :—

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.” ;

(iii) in sub-section (7), for the words “the Chief Justice or the person or institution designated by him is final”, the words “the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision” shall be substituted ;

(iv) for sub-section (8), the following sub-section shall be substituted, namely :—

“(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties ; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.” ;

(v) in sub-section (9), for the words “the Chief Justice of India or the person or institution designated by him”, the words “the Supreme Court or the person or institution designated by that Court” shall be substituted ;

(vi) for sub-section (10), the following sub-section shall be substituted, namely :—

“(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.” ;

(vii) in sub-section (11), for the words “the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made”, the words “different High Courts or their designates, the High Court or its designate to whom the request has been first made” shall be substituted ;

(viii) for sub-section (12), the following sub-section shall be substituted, namely :—

“(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court” ; and

(b) where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to “the Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “High Court” within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.’ ;

(ix) after sub-section (12), the following sub-sections shall be inserted, namely :—

“(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.”.

7. Insertion of new section 11A.—After section 11 of the principal Act, the following new section shall be inserted, namely :—

“11A. *Power of Central Government to amend Fourth Schedule.*—(1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the *Official Gazette*, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the both Houses of Parliament.”.

8. Amendment of section 12.—In section 12 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality ; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.” ;

(ii) after sub-section (4), the following sub-section shall be inserted, namely :—

“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator :

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

9. Amendment of section 14.—In section 14 of the principal Act, in sub-section (1), in the opening portion, for the words “The mandate of an arbitrator shall terminate if ”, the words “The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if ” shall be substituted.

10. Substitution of new section for section 17.—For section 17 of the principal Act, the following section shall be substituted, namely :—

“17. Interim measures ordered by arbitral tribunal.—(1) A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to the arbitral tribunal—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings ; or

(ii) for an interim measure of protection in respect of any of the following matters, namely :—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement ;

(b) securing the amount in dispute in the arbitration ;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence ;

(d) interim injunction or the appointment of a receiver ;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.”.

11. Amendment of section 23.—In section 23 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely :—

“(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.”.

12. Amendment of section 24.—In section 24 of the principal Act, after the proviso to sub-section (1), the following proviso shall be inserted, namely :—

“Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.”.

13. Amendment of section 25.—In section 25 of the principal Act, in clause (b), at the end, after the words “allegations by the claimant”, the words “and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited” shall be inserted.

14. Amendment of section 28.—In section 28 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”.

15. Insertion of new sections 29A and 29B.—After section 29 of the principal Act, the following new sections shall be inserted, namely :—

“29A. *Time limit for arbitral award.*—(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period :

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on

the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

29B. *Fast track procedure.*—(1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1) :

(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing ;

(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them ;

(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues ;

(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.”.

16. Amendment of section 31.—In section 31 of the principal Act,—

(i) in sub-section (7), for clause (b), the following clause shall be substituted, namely :—

“(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).’;

(ii) for sub-section (8), the following sub-section shall be substituted, namely :—

“(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.”.

17. Insertion of new section 31A.—After section 31 of the principal Act, the following new section shall be inserted, namely :—

‘31A. *Regime for costs.*—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

- (a) whether costs are payable by one party to another ;
- (b) the amount of such costs ; and
- (c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses ;
- (ii) legal fees and expenses ;
- (iii) any administration fees of the institution supervising the arbitration ; and
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—

- (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party ; or
- (b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

- (a) the conduct of all the parties ;
- (b) whether a party has succeeded partly in the case ;
- (c) whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings ; and
- (d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—

- (a) a proportion of another party’s costs ;
- (b) a stated amount in respect of another party’s costs ;
- (c) costs from or until a certain date only ;
- (d) costs incurred before proceedings have begun ;
- (e) costs relating to particular steps taken in the proceedings ;
- (f) costs relating only to a distinct part of the proceedings ; and
- (g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.’

18. Amendment of section 34.—In section 34 of the principal Act,—

(I) in sub-section (2), in clause (b), for the *Explanation*, the following *Explanations* shall be substituted, namely :—

“*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or

- (ii) it is in contravention with the fundamental policy of Indian law ; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.” ;

(II) after sub-section (2), the following sub-section shall be inserted, namely :—

“(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award :

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.” ;

(III) after sub-section (4), the following sub-sections shall be inserted, namely :—

“(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”.

19. Substitution of new section for section 36.—For section 36 of the principal Act, the following section shall be substituted, namely :—

“36. *Enforcement.*—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing :

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).”.

20. Amendment of section 37.—In section 37 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely :—

- “(a) refusing to refer the parties to arbitration under section 8 ;
- (b) granting or refusing to grant any measure under section 9 ;
- (c) setting aside or refusing to set aside an arbitral award under section 34.”.

21. Amendment of section 47.—In section 47 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely :—

“*Explanation.*—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.’.

22. Amendment of section 48.—In section 48 of the principal Act, for the *Explanation* to sub-section (2), the following *Explanations* shall be substituted, namely :—

“*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or

(ii) it is in contravention with the fundamental policy of Indian law ; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

23. Amendment of section 56.—In section 56 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely :—

“*Explanation.*—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.’.

24. Amendment of section 57.—In section 57 of the principal Act, in sub-section (1), for the *Explanation*, the following *Explanations* shall be substituted, namely :—

“*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or

(ii) it is in contravention with the fundamental policy of Indian law ; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

25. Insertion of new Fourth Schedule, Fifth Schedule, Sixth Schedule and Seventh Schedule.—After the Third Schedule to the principal Act, the following new Schedules shall be inserted, namely :—

‘THE FOURTH SCHEDULE

[See section 11 (14)]

Sum in dispute	Model fee
Upto Rs. 5,00,000	Rs. 45,000
Above Rs. 5,00,000 and upto Rs. 20,00,000	Rs. 45,000 plus 3.5 per cent. of the claim amount over and above Rs. 5,00,000
Above Rs. 20,00,000 and upto Rs. 1,00,00,000	Rs. 97,500 plus 3 per cent. of the claim amount over and above Rs. 20,00,000
Above Rs. 1,00,00,000 and upto Rs. 10,00,00,000	Rs. 3,37,500 plus 1 per cent. of the claim amount over and above Rs. 1,00,00,000
Above Rs. 10,00,00,000 and upto Rs. 20,00,00,000	Rs. 12,37,500 plus 0.75 per cent. of the claim amount over and above Rs. 1,00,00,000
Above Rs. 20,00,00,000	Rs. 19,87,500 plus 0.5 per cent. of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000

*Note :—*In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent. on the fee payable as per the table set out above.

THE FIFTH SCHEDULE

[See section 12 (1)(b)]

The following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators :

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Previous services for one of the parties or other involvement in the case

20. The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.
21. The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.
22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.
23. The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.
24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

Relationship between an arbitrator and another arbitrator or counsel

25. The arbitrator and another arbitrator are lawyers in the same law firm.
26. The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.
27. A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.
28. A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.
29. The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.

Relationship between arbitrator and party and others involved in the arbitration

30. The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.
31. The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

Other circumstances

32. The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.
33. The arbitrator holds a position in an arbitration institution with appointing authority over the dispute.
34. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

Explanation 1.—The term “close family member” refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term “affiliate” encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.

THE SIXTH SCHEDULE

[See section 12 (1)(b)]

NAME :

CONTACT DETAILS :

PRIOR EXPERIENCE (INCLUDING EXPERIENCE WITH ARBITRATIONS) :

NUMBER OF ONGOING ARBITRATIONS :

CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT-MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE OR IMPARTIALITY (LIST OUT) :

CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN TWELVE MONTHS (LIST OUT) :

THE SEVENTH SCHEDULE

[See section 12 (5)]

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1.—The term “close family member” refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term “affiliate” encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.’

26. Act not to apply to pending arbitral proceedings.—Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.

27. Repeal and savings.—(1) The Arbitration and Conciliation (Amendment) Ordinance, 2015 (Ord. 9 of 2015), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 1st January 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December 2015, and is hereby published for general information :—

THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL
APPELLATE DIVISION OF HIGH COURTS ACT, 2015

(No. 4 OF 2016)

[31st December, 2015.]

An Act to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 23rd day of October, 2015.

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(a) “Commercial Appellate Division” means the Commercial Appellate Division in a High Court constituted under sub-section (1) of section 5 ;

(b) “Commercial Court” means the Commercial Court constituted under sub-section (1) of section 3 ;

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents ;

(ii) export or import of merchandise or services ;

(iii) issues relating to admiralty and maritime law ;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same ;

(v) carriage of goods ;

(vi) construction and infrastructure contracts, including tenders ;

(vii) agreements relating to immovable property used exclusively in trade or commerce ;

(viii) franchising agreements ;

(ix) distribution and licensing agreements ;

(x) management and consultancy agreements ;

(xi) joint venture agreements ;

(xii) shareholders agreements ;

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services ;

(xiv) mercantile agency and mercantile usage ;

- (xv) partnership agreements ;
- (xvi) technology development agreements ;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits ;
- (xviii) agreements for sale of goods or provision of services ;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum ;
- (xx) insurance and re-insurance ;
- (xxi) contracts of agency relating to any of the above ; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property ;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions ;
- (d) “Commercial Division” means the Commercial Division in a High Court constituted under sub-section (1) of section 4 ;
- (e) “District Judge” shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India ;
- (f) “document” means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter ;
- (g) “notification” means a notification published in the *Official Gazette* and the expression “notify” with its cognate meanings and grammatical variations shall be construed accordingly ;
- (h) “Schedule” means the Schedule appended to the Act ; and
- (i) “Specified Value”, in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.

(2) The words and expressions used and not defined in this Act but defined in the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872), shall have the same meanings respectively assigned to them in that Code and the Act.

CHAPTER II

CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS

3. Constitution of Commercial Courts.—(1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act :

Provided that no Commercial Court shall be constituted for the territory over which the High Court has ordinary original civil jurisdiction.

(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The State Government shall, with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a Commercial Court, from amongst the cadre of Higher Judicial Service in the State.

4. Constitution of Commercial Division of High Court.—(1) In all High Courts, having ordinary civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

5. Constitution of Commercial Appellate Division.—(1) After issuing notification under sub-section (1) of section 3 or order under sub-section (1) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.

6. Jurisdiction of commercial Court.—The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

7. Jurisdiction of Commercial Divisions of High Courts.—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court :

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court :

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

8. Bar against revision application or petition against an interlocutory order.—Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.

9. Transfer of suit if counterclaim in a commercial dispute is of Specified Value.—(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), in the event that a counterclaim filed in a suit before a civil court relating to a commercial dispute is of Specified Value, such suit shall be transferred by the civil court to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit.

(2) In the event that such suit is not transferred in the manner contemplated in sub-section (1), the Commercial Appellate Division of the High Court exercising supervisory jurisdiction over the civil court in question may, on the application of any of the parties to the suit, withdraw such suit pending before the civil court and transfer the same for trial or disposal to the Commercial Court or Commercial Division or, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

10. Jurisdiction in respect of arbitration matters.—Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.—Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

CHAPTER III

SPECIFIED VALUE

12. Determination of Specified Value.—(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner :—

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value ;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value ;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value ;

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value ; and

(e) where the counterclaim is raised in any suit, appeal or application, the value of the subject-matter of the commercial dispute in such counterclaim as on the date of the counterclaim shall be taken into account.

(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

CHAPTER IV

APPEALS

13. Appeal from decrees of Commercial Courts and Commercial Divisions.—(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be :

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996.

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

14. Expeditious disposal of appeals.—The Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

CHAPTER V

TRANSFER OF PENDING SUITS

15. Transfer of pending cases.—(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court :

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance with Order XIV-A of the Code of Civil Procedure, 1908 (5 of 1908) :

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

CHAPTER VI

AMENDMENTS TO THE PROVISIONS OF THE CODE OF CIVIL PROCEDURE, 1908

16. *Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.*—(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.

CHAPTER VII

MISCELLANEOUS

17. *Collection and disclosure of data by Commercial Courts, Commercial Divisions and Commercial Appellate Divisions.*—The statistical data regarding the number of suits, applications, appeals or writ petitions filed before the Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, the pendency of such cases, the status of each case, and the number of cases disposed of, shall be maintained and updated every month by each Commercial Court, Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court.

18. *Power of High Court to issue directions.*—The High Court may, by notification, issue practice directions to supplement the provisions of Chapter II of this Act or the Code of Civil Procedure, 1908 (5 of 1908) insofar as such provisions apply to the hearing of commercial disputes of a Specified Value.

19. *Infrastructure facilities.*—The State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court.

20. *Training and continuous education.*—The State Government may, in consultation with the High Court, establish necessary facilities providing for training of Judges who may be appointed to the Commercial Court, Commercial Division or the Commercial Appellate Division in a High Court.

21. *Act to have overriding effect.*—Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.

22. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the *Official Gazette*, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

23. Repeal and savings.—(1) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 (Ord. 8 of 2015) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

SCHEDULE

(See section 16)

1. Amendment of section 26.—In section 26 of the Code of Civil Procedure, 1908 (5 of 1908) (hereafter referred to as the Code), in sub-section (2), the following proviso shall be inserted, namely :—

“Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A”.

2. Substitution of new section for section 35.—For section 35 of the Code, the following section shall be substituted, namely :—

‘35. *Costs.*—(1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine :—

- (a) whether costs are payable by one party to another ;
- (b) the quantum of those costs ; and
- (c) when they are to be paid.

Explanation.—For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—

- (i) the fees and expenses of the witnesses incurred ;
- (ii) legal fees and expenses incurred ;
- (iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party :

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

- (a) the conduct of the parties ;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful ;
- (c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case ;
- (d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party ; and
- (e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay—

- (a) a proportion of another party's costs ;
- (b) a stated amount in respect of another party's costs ;
- (c) costs from or until a certain date ;
- (d) costs incurred before proceedings have begun ;
- (e) costs relating to particular steps taken in the proceedings ;
- (f) costs relating to a distinct part of the proceedings ; and
- (g) interest on costs from or until a certain date.'

3. *Amendment of section 35A.*—In section 35A of the Code, sub-section (2) shall be omitted.

4. *Amendment of First Schedule.*—In the First Schedule to the Code,—

(A) in the Order V, in Rule 1, in sub-rule (1), for the second proviso, the following proviso shall be substituted, namely :—

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.” ;

(B) in Order VI,—

(i) after Rule 3, the following Rule shall be inserted, namely :—

“3A. Forms of pleading in Commercial Courts—In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.” ;

(ii) after Rule 15, the following Rule shall be inserted, namely :—

“15A. Verification of pleadings in a commercial dispute.—

(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.” ;

(C) in Order VII, after Rule 2, the following Rule shall be inserted, namely :—

“2A. Where interest is sought in the suit,—

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaintiff shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint ; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state—

- (a) the rate at which interest is claimed ;
- (b) the date from which it is claimed ;
- (c) the date to which it is calculated ;
- (d) the total amount of interest claimed to the date of calculation ; and
- (e) the daily rate at which interest accrues after that date.” ;

(D) in Order VIII,—

(i) in Rule 1, for the proviso, the following proviso shall be substituted, namely :—

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.” ;

(ii) after Rule 3, the following Rule shall be inserted, namely :—

“3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court—

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.” ;

(iii) in Rule 5, in sub-rule (1), after the first proviso, the following proviso shall be inserted, namely :—

“Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.” ;

(iv) in Rule 10, after the first proviso, the following proviso shall be inserted, namely :—

“Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.” ;

(E) for Order XI of the Code, the following Order shall be substituted, namely :—

“ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. *Disclosure and discovery of documents.*—(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including :—

(a) documents referred to and relied on by the plaintiff in the plaint ;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case ;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—

(a) the documents referred to and relied on by the defendant in the written statement ;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence ;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only—

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint,

or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

2. Discovery by interrogatories.—(1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer :

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose :

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer of other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

(7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by *viva voce* examination, as the court may direct.

3. Inspection.—(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counterclaim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) The Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and denial of documents.—(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying :—

- (a) correctness of contents of a document ;
- (b) existence of a document ;
- (c) execution of a document ;

(d) issuance or receipt of a document ;

(e) custody of a document.

Explanation.—A statement of admission or denial of the existence of a document made in accordance with sub-rule (2)(b) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria,— costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. Production of documents.—(1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

6. Electronic records.—(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000) (21 of 2000), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify—

(a) the parties to such Electronic Record ;

(b) the manner in which such electronic record was produced and by whom ;

(c) the dates and time of preparation or storage or issuance or receipt of each such electronic record ;

(d) the source of such electronic record and date and time when the electronic record was printed ;

(e) in case of email ids, details of ownership, custody and access to such email ids ;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource ;

(g) deponent's knowledge of contents and correctness of contents ;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored ;

(i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

7. Certain provisions of the Code of Civil Procedure, 1908 not to apply.—For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.”.

5. Insertion of new Order XIII-A.—After Order XIII of the Code, the following Order shall be inserted, namely :—

‘ORDER XIII-A

SUMMARY JUDGMENT

1. Scope of and classes of suits to which this Order applies.—(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word “claim” shall include—

(a) part of a claim ;

(b) any particular question on which the claim (whether in whole or in part) depends ;

or

(c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment.—An applicant may apply for summary judgment at any time after summons has been served on the defendant :

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment.—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be ; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure.—(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder :—

(a) the application must contain a statement that it is an application for summary judgment made under this Order ;

(b) the application must precisely disclose all material facts and identify the point of law, if any ;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—

(i) include such documentary evidence in its application, and

(ii) identify the relevant content of such documentary evidence on which the applicant relies ;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be ;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of :—

(a) the date fixed for the hearing ; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant :—

(a) the reply must precisely—

(i) disclose all material facts ;

(ii) identify the point of law, if any ; and

(iii) state the reasons why the relief sought by the applicant should not be granted ;

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—

(i) include such documentary evidence in its reply ; and

(ii) identify the relevant content of such documentary evidence on which the respondent relies ;

(c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be ;

(d) the reply must concisely state the issues that should be framed for trial ;

(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment ; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment.—(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must :—

(a) file such documentary evidence ; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must :—

(a) file such documentary evidence in reply ; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be :—

- (a) filed if such documentary evidence has already been filed ; or
- (b) served on a party on whom it has already been served.

6. Orders that may be made by Court.—(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following :—

- (a) judgment on the claim ;
- (b) conditional order in accordance with Rule 7 mentioned hereunder ;
- (c) dismissing the application ;
- (d) dismissing part of the claim and a judgment on part of the claim that is not dismissed ;
- (e) striking out the pleadings (whether in whole or in part) ; or
- (f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

7. Conditional order.—(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may :—

- (a) make it subject to all or any of the following conditions :—
 - (i) require a party to deposit a sum of money in the Court ;
 - (ii) require a party to take a specified step in relation to the claim or defence, as the case may be ;
 - (iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper ;
 - (iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion ; and
- (b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs.—The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.’.

6. Omission of Order XV.—Order XV of the Code shall be omitted.

7. Insertion of Order XV-A.—After Order XV of the Code, the following Order shall be inserted, namely :—

“ORDER XV-A

CASE MANAGEMENT HEARING

1. First Case Management Hearing.—The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing.—In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order—

- (a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908) after examining pleadings, documents and documents

produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required ;

- (b) listing witnesses to be examined by the parties ;
- (c) fixing the date by which affidavit of evidence to be filed by parties ;
- (d) fixing the date on which evidence of the witnesses of the parties to be recorded ;
- (e) fixing the date by which written arguments are to be filed before the Court by the parties ;
- (f) fixing the date on which oral arguments are to be heard by the Court ; and
- (g) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial.—In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-to-day basis.—The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

5. Case Management Hearings during a trial.—The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the Court in a Case Management Hearing.—(1) In any Case Management Hearing held under this Order, the Court shall have the power to—

- (a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A ;
- (b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues ;
- (c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so ;
- (d) adjourn or bring forward a hearing if it finds sufficient reason to do so ;
- (e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X ;
- (f) consolidate proceedings ;
- (g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed ;
- (h) direct a separate trial of any issue ;
- (i) decide the order in which issues are to be tried ;
- (j) exclude an issue from consideration ;
- (k) dismiss or give judgment on a claim after a decision on a preliminary issue ;
- (l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI ;
- (m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material ;
- (n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material ;
- (o) delegate the recording of evidence to such authority appointed by the Court for this purpose ;
- (p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority ;

(q) order any party to file and exchange a costs budget ;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

(2) When the Court passes an order in exercise of its powers under this Order, it may—

(a) make it subject to conditions, including a condition to pay a sum of money into Court ; and

(b) specify the consequence of failure to comply with the order or a condition.

(3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing.—(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present :

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of non-compliance with orders.—Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to—

(a) condone such non-compliance by payment of costs to the Court ;

(b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or

(c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.”.

8. Amendment of Order XVIII.—In Order XVIII of the Code, in Rule 2, for sub-rules (3A), (3B), (3C), (3D), (3E) and (3F), the following shall be substituted, namely :—

“(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.”.

9. Amendment of Order XVII.—In Order XVIII of the Code, in Rule 4, after sub-rule (1), the following sub-rules shall be inserted, namely :—

“(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal :

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.”.

10. Amendment to Order XIX.—In Order XIX of the Code, after Rule 3, the following Rules shall be inserted, namely :—

“4. *Court may control evidence.*—(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.”.

5. *Redacting or rejecting evidence.*—A Court may, in its discretion, for reasons to be recorded in writing—

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence ; or

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. *Format and guidelines of affidavit of evidence.*—An affidavit must comply with the form and requirements set forth below :—

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with ;

(b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper ;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject ;

(d) an affidavit shall state—

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief ; and

(ii) the source for any matters of information or belief ;

(e) an affidavit should—

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file) ;

(ii) be divided into numbered paragraphs ;

(iii) have all numbers, including dates, expressed in figures ; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.”.

11. *Amendment of Order XX.*—In Order XX of the Code, for Rule 1, the following Rule shall be substituted, namely :—

“(1) The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.”.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 1st January 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December 2015, and is hereby published for general information :—

THE ATOMIC ENERGY (AMENDMENT) ACT, 2015

(No. 5 OF 2016)

[31st December, 2015.]

An Act further to amend the Atomic Energy Act, 1962.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows :—

1. Short title and commencement.—(1) This Act may be called the Atomic Energy (Amendment) Act, 2015.

(2) It shall come into force on such date as the Central Government may, by notification in the *Official Gazette*, appoint.

2. Amendment of section 2.—In section 2 of the Atomic Energy Act, 1962 (33 of 1962) (hereinafter referred to as the principal Act), in sub-section (1), for clause (bb), the following clause shall be substituted, namely :—

“(bb) “Government company” means a company in which—

(i) not less than fifty-one per cent. of the paid-up share capital is held by the Central Government; or

(ii) the whole of the paid-up share capital is held by one or more of the companies specified in sub-clause (i) and which, by its articles of association, empowers the Central Government to constitute and reconstitute its Board of Directors;”.

3. Amendment of section 14.—In the principal Act, in section 14, after sub-section (1), the following sub-sections shall be inserted, namely :—

“(1A) No licence under sub-clause (c) of clause (ii) of sub-section (1) shall be granted to a person other than a Department of the Central Government or any authority or an institution or a corporation established by the Central Government, or a Government company.

(1B) Any licence granted to a Government company under sub-section (1) shall stand cancelled in case the licensee ceases to be a Government company and, notwithstanding anything contained in any other law for the time being in force, all assets thereof shall vest in the Central Government free from any liability and the Central Government shall take such measures for safe operation of the plant and disposal of nuclear material so vested in it, as may be necessary in accordance with the provisions of section 3.”.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 1st January 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December 2015, and is hereby published for general information :—

THE PAYMENT OF BONUS (AMENDMENT) ACT, 2015

(No. 6 OF 2015)

[31st December, 2015.]

An Act further to amend the Payment of Bonus Act, 1965.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows :—

1. Short title and commencement.—(1) This Act may be called the Payment of Bonus (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on the 1st day of April, 2014.

2. Amendment of section 2.—In section 2 of the Payment of Bonus Act, 1965 (21 of 1965) (hereinafter referred to as the principal Act), in clause (13), for the words “ten thousand rupees”, the words “twenty-one thousand rupees” shall be substituted.

3. Amendment of section 12.—In section 12 of the principal Act,—

(i) for the words “three thousand and five hundred rupees” at both the places where they occur, the words “seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher” shall respectively be substituted;

(ii) the following *Explanation* shall be inserted at the end, namely :—

‘*Explanation.*—For the purposes of this section, the expression “scheduled employment” shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948 (11 of 1948).’.

4. Amendment of section 38.—In section 38 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) The Central Government may, subject to the condition of previous publication, by notification in the *Official Gazette*, make rules to carry out the provisions of this Act.”.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 11th January 2016/Pausha 21, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 8th January 2015, and is hereby published for general information :—

THE SUGAR CESS (AMENDMENT) ACT, 2015

(No. 9 OF 2015)

[8th January, 2016.]

An Act further to amend the Sugar Cess Act, 1982.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Sugar Cess (Amendment) Act, 2015.

(2) It shall come into force on such date as the Central Government may, by notification in the *Official Gazette*, appoint.

2. *Amendment of section 3 of Act 3 of 1982.*—In the Sugar Cess Act, 1982, in section 3, in sub-section (1), for the words “twenty-five rupees”, the words “two hundred rupees” shall be substituted.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

By order and in the name of the Governor of Maharashtra,

P. H. MALI,
Principal Secretary to Government,
Law and Judiciary Department.